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UNITED STATES SENATE

WEDNESDAY, MARCH 14, 1977

United States Senate,

Committee on Environment and
Public Works

Washington, D. C.

The committee met at 10:07 a.m., pursuant to call,
in room 4200, Jackson Senate Office Building, Sen. Jennings
Pamphlet Building of the committee presiding.

Present: Senators Mansfield, Muskie, Gross, Senator,
Burdick, Hart, Anderson, Grommick, Chafee and Millard.

Senator Mansfield. Senator Muskie, is your would proceed
or yield to Senator Hart.

Senator Muskie. Yield to Senator Hart.

Senator Hart. Thank you, Mr. Chairman.

I will try to recapitulate where we are. We had an
agenda of the discussion of possible amendments that various
members of the committee indicated as issues that they
intended to discuss. And then we had two more day of mark-up
where we began a list of some dozen or a half possible
amendments, and there have been two conflicts that intervened
and we haven't been able to get some of the amendments
now.

So what I would like to propose is we pick up on the agenda where we left off. I think we have been circulating essentially the same agenda since the last meeting. I propose we pick up, as the staff has proposed, with the first unassigned matter, which I believe is Item No. 1. But I will have to have Leon educate us on that question, and procedurally, just have the staff outline the issues. And we will have members who wish to offer amendments offer them, discuss them and vote on them as quickly as possible.

And acknowledging two facts: One, that those of us who have been on the Committee before are fairly familiar with most of the principal issues and, therefore, can, hopefully, summarize our action as quickly as possible. But at the same time, acknowledging the fact that the new members are running very fast to catch up on the details of some very complex issues and, therefore, will have to handle their concerns carefully so that everyone who is now on the committee understands what it is we are voting on. So it is a balance act.

My own view is we ought to move on this as quickly as possible. I would be interested in Senator Nuccio's views as to the timeliness here and perhaps the importance of getting a bill out within a reasonable period of time and not delaying further.

I think, in my own view, we just agree on it or three

1 would have we didn't want to lose any working opportunity
2 has been done and we can still return the bill very
3 strongly we want to get to the point of pass as
4 quickly as possible.

5 Senator McNair. Have we scheduled a work-up session
6 between now and April 1st?

7 Mr. Billings. One day and one time, and that is the
8 limit that we have been able to schedule. The majority
9 leader has scheduled this bill on the floor on April 1st.

10 Senator Downer. When?

11 Mr. Billings. April 1st.

12 Senator McNair. That is a surprise.

13 Mr. Billings. We would like to keep that schedule.
14 We were informed on Friday.

15 Senator McNair. Well, this is as good a time as any.

16 Mr. Billings. Very good, Mr. Chairman, if that is
17 the case, scheduling our work-up after tomorrow would
18 be difficult because it will take a little while to write
19 the report to be ready for the floor.

20 Senator McNair. How soon you want the bill finished
21 by tomorrow?

22 Mr. Billings. Staff would appreciate that.

23 (Laughter.)

24 Senator McNair. The staff needs more time than the
25 committee.

1 Well, I think the only way to begin it is to begin.
2 Some effort has been made to schedule make-up sessions
3 beyond tomorrow?

4 Mr. Billings. Very little, Mr. Chairman, because
5 the committee is almost solidly booked to the end --

6 Senator Hart. Committee-related business or other
7 things?

8 Mr. Tago. This week is full, Senator. We have nothing
9 filed for next week. Well, there is one nomination hearing
10 next week.

11 Mr. Billings. Monday?

12 Mr. Tago. Yes.

13 Senator Dinkins. Well, my own feeling is if we can have
14 four or five sessions in which we have attendance coming
15 in, maybe at 2:00 p.m. in the morning if necessary.
16 We get this done unless members are disposed to engage
17 in a wholesale revision of what we did last year. My own
18 feeling is that we did last year is still basically sound.
19 And if we look at the various issues that come up in that
20 late and perhaps hurried to support what we did last year,
21 we can move rapidly.

22 But if there is going to be an effort to substantially
23 reverse what we did last year, we won't have this done by
24 April 15th next year and since April 15th this year. All
25 of those other work elements that occurred the last two years

well understood what I am saying. So I hope my name through
above I mean.

Sen. Senator Hart, why don't we start? Is today's
session only this machinery?

Mr. Billings: We start on schedule all day.

Senator Murkin: Let's see if we can't devote a
subcommittee -- Let's try and start now and see what kind
of a pace we can set.

Senator Hart: As I contract in believing we solved the
loss of pay issue bill subject of development of report
language which would reflect agreement on the part of the
members and that language is available for distribution?
I think there was only a staff level question whether
Senator Hart was satisfied with the language.

Senator Murkin: He is satisfied?

Mr. Billings: The question is whether Senator Hart
was satisfied with the language.

Senator Hart: Why don't you summarize the issue.

Mr. Billings: The issue, simply put, is that the
legislation of the Committee Bill 1252 provides for the use
of supplemental controls by non-ferrous smelters and the
amendment would provide where supplemental controls are
used their use shall not result in a loss of pay for production
workers when plants are closed down to meet sufficient air
quality standards.

1 Senator Hart. The specific language is being circulated.
2 Does anyone have any questions about it?

3 Senator Dole: Mr. Chairman, I originally raised
4 the issue and I have discussed it with the committee staff.
5 It is my understanding that the language that they are
6 proposing is the same language that was discussed with me and
7 I have no objection. But I believe that Senator McClure
8 is operating under the premise that we are not going to change
9 the language in last year's bill on this and, therefore,
10 he would like an opportunity to review the language.

11 I merely make that request in his behalf.

12 Senator Hart. Has the staff reviewed the language?

13 Mr. Billings. Was Senator McClure's staff?

14 Senator Hart. Yes.

15 Mr. Billings. The recent language proposed reads as
16 follows: "This provision should be met by the use of
17 procedures incorporated in existing agreements between
18 labor and management. Where no labor organization exists
19 or no such agreement exists, it is the responsibility of
20 the State to include the necessary provisions and the
21 compliance schedules established for individual sources."

22 Senator Hart. My inclination is to vote this up or
23 down and if objections, members can raise it later. We
24 have to vote on. If we go back and delay all these issues,
25 we won't get anything done.

Senator Chafee: Is Mr. Davis's question?

Senator Hart: Yes.

Senator Chafee: Mr. Hollings, I would like approval of this proposed amendment and the report language.

Senator Hart: Is there a second?

Senator Gravel: Second.

Senator Hart: It is moved and seconded that be adopted as written by the staff. All in favor say aye.

Senator Chafee: Wait a minute. I am in that category with the new people having to work up. Suppose there is no contract? There is a responsibility of a State to include the necessary provision of the compliance schedule for individual companies. What does that mean?

Mr. Hollings: What that means, Senator Chafee, is each two-source producer will have to be applicable to a compliance schedule; a set of requirements imposed on it by the State to meet the ambient air quality standards as a part of their supplemental control plan. In that compliance schedule there will be specified a requirement that no reduction in production can result in loss of pay for the workers.

Senator Chafee: Who pays it?

Mr. Hollings: If the producer could assume the responsibility so the environmental controls do not result in -- controls. Senator Chafee, are processes by which

1 the amount of emissions are controlled by the amount of
2 production or by the switching of fuel. But in the case
3 of smelters, it is the amount of production. If your
4 application of those controls means that there is a layoff
5 of workers, the company would still pay the wages of the
6 workers who would otherwise lose pay during that time off.

7 Senator Daines. For how long?

8 Mr. Hillings. For whatever period of time the company
9 closed down to meet the ambient air quality standards.
10 That is in the alternative of installing a continuous
11 emission control system which is argued as being uneconomical
12 or unreasonable control strategy.

13 Senator Hart. The point is, if an industry chooses
14 that alternative, then the people working in the plant
15 should not be the hostages or not suffer as a result of
16 industry's decision.

17 Senator Helms. Why is this the business of the
18 Congress to operate this at an impossible economic level?
19 You know, they have the choice of closing down or not
20 closing down. But if they close down, it still doesn't
21 help them any. And the statement of the staff, it goes
22 on as long as not in compliance.

23 Mr. Hillings. No, Senator Helms. A supplemental
24 control strategy is a strategy to which emission reductions
25 are used to meet the ambient air quality standards. The

they can't the weather conditions in any period
 year they may require weather conditions, if they do not
 require conditions, they will accept the average. In
 some cases this is a reduction for periods of hours. I
 don't know whether there is any indication of periods longer.

But if periods of hours or days, the policy sanctioned
 by this amendment, then it is argued that the workers
 should not be penalized for it. Without the sanction of
 this amendment, without this "Federal sanction" those employers
 would be required to go to continuous controls. And in
 that event, the employees would not be penalized because it
 would be a continuous control system.

Mr. Grayson. Without the benefit of the amendment
 that is already in the bill, this additional amendment does
 not provide the benefit of the alternative.

Senator Anderson. I can't hear you over here.

Mr. Grayson. I said two amendments we are talking
 about. One is in the bill sponsored by Senator Domenici
 last year that provides this alternative. This is the
 second amendment and affects that.

So that when Sen. Hart says this amendment provides that
 flexibility, he is talking about the amendment already in
 the bill, not the Hart addition to that amendment.

Senator Hart. It is my understanding -- and correct
 or if I am wrong -- that the alternative strategy is one

1 What the industry itself requested.

2 Senator Townsend: No question about that, concerning
3 that in my testimony the labor union requested it, they.
4 The working men in that area prefer to have the majority
5 of the responsibility of that country subject making environmental
6 controls to the risk of having no proper controls at all.

7 No amendment provides an alternative way of keeping
8 it open with environmental controls that meet primary
9 standards. And I have been told that might result in
10 shortened hours or a closure of one day or another. And
11 what the committee is doing here in this amendment is it
12 we are going to give them that alternative and that latitude,
13 which I feel they are entitled to -- I am not sure that the
14 law would oppose them anyway -- we are just prescribing
15 they are use this alternative strategy as an alternative
16 from them under this. There will be provisions in labor
17 contracts to provide there is no loss of pay attached
18 to the employees under this kind of planning.

19 My particular people don't see any objection because
20 they have already worked such an arrangement out. But I
21 think your objections are very well taken as to whether
22 it is really the business of this committee to discuss
23 environmental control alternatives and mechanisms to go
24 into the field of labor relations here.

25 So I don't want any misunderstanding as to which amendment

1 is also, my amendment provided for the additional latitude
2 for environmental control strategy to be laid.

3 Senator Gravel: If I might point out, we are making
4 a social decision, and I think a good one. The choices are
5 an addition of capital or the limitation of the utilization
6 of existing capital, which also is a cost.

7 What we are trying to do is divorce from that any pain
8 to be suffered by the employees of the corporate enterprise
9 if they choose the latter.

10 To that would just raise the issue, but you are still
11 comparing cost of the plant lease as opposed to extra cost
12 for new capital.

13 Senator Waller: It would depend on which but you want
14 no further.

15 Senator Gravel: We are trying to arrive at a goal.

16 Senator Waller: I understand that. But philosophically,
17 I have to express some reservation.

18 Senator Waller: You know, I don't like supplemental
19 controls at all. I just think there is only one way to
20 force technology, and that is to set a health standard
21 for air quality and impose the responsibility upon the country
22 to meet it. And that is what the law said until the Romenet
23 amendment, and we were so thoroughly placated by the economics
24 of this industry as give them this option. We didn't choose,
25 you know, to govern the future relations, we chose to impose

1 a requirement for continuous controls.

2 If they want the other option, it seems to me management
3 ought to be willing to accept the cost burden of that
4 option if they regard it as preferable on the cost burden
5 of continuous controls in terms of air quality goals. If
6 they want to choose another option, if the industry, you
7 know, has used a labor force that is under threat of its
8 jobs, you know, to force them to accept a deterioration of air
9 quality in the region as a price for their jobs, then,
10 you know, you have given them a power tool that they ought
11 not to have.

12 We have gone into that national policy on air quality
13 because the States were not inclined to move. Now, if we
14 are going to dilute that national objective by giving
15 industries who want supplemental controls the economic
16 weapon to force their employees to accept production shutdowns
17 as a method of controlling air quality, then I am not for
18 that rule. I am for continuous controls as a preferable
19 alternative.

20 That is where the issue is. I regard it that we have
21 made a concession to this industry and now it is being
22 converted into arbitrary conditions. Well, if that is the
23 way it is regarded, as arbitrary conditions, I will abandon
24 it and go back to continuous controls.

25 Senator Cessford. I hope to start the first day off

disagreeing with my good friend, the Chairman of the committee,
but let me make sure --

Senator Muskie: Are we in disagreement? Are you against
the amendment?

Senator Domenici: I said I was not.

Senator Muskie: Then we are not in disagreement.

Senator Domenici: I think there is a disagreement
in terms of the statement that the chairman made as to
where we are. The '70 act, Mr. Chairman, did not prohibit
environmental controls.

Senator Muskie: I think it did.

Senator Domenici: Let me tell why I offered my amendment
so the record will be straight. The bill before us defines
emission controls, and defines it in such a way that there
must be a permanent strategy. And in light of that, so
you will remember the intent of my amendment, my amendment
only applies if there are permanent controls. We call
that supplementary at this point. But if they are permanent.

It applies only to existing facilities wherein such
supplementary controls can't do the job and then they put
on environmental control strategy on top of it. It does
not in any way change the health standards. Specifically,
they must comply with primary and secondary standards.

But the environmental control strategy for that kind,
very limited in nature, will be made legal by my amendment.

1 provided all the other things and in there. We are not
2 talking about new swelters, so I wasn't intruding on the
3 '70 law, but modifying the new controls with my swelter
4 amendment.

5 Senator Chafee, I don't think it is necessary to belabor
6 our differing interpretations of the 1970 act. The point
7 is that because there were those seeking to dilute what I
8 viewed to be the impact of the 1970 act, it was necessary
9 for this committee to clarify the issue. And I supported
10 your amendment here.

11 But in a very real sense it opens the door for similar
12 reluctance for other industries. It was exceptions taking
13 into account the particular problems of your industry, but
14 if that is to be viewed as, you know, somehow more arbitrary
15 and more unreasonable than the '70 act as I interpret it,
16 I am tempted to go the other way.

17 I understand that Senators Wallop and Chafee have not
18 been a part of this committee before and want to examine
19 these policy questions. I have no challenge on that. But
20 I have made my point only for the purpose of clarifying
21 from my perspective, and we will have different perspectives
22 what this all means. The industry prefers this treatment
23 policy to the continuous control policy that we regard as
24 essential to the overall act. So we tried, as a committee,
25 to establish the safeguards that will surround this exception.

1 And I don't think it is an unreasonable safeguard to
2 to not require that the workers pay the cost and carry the
3 burden and bear the penalty of this choice of strategy. I
4 don't think it is unreasonable at all.

5 Senator Hart. I point out that the principle was adopted
6 in the House legislation last year, and also adopted in the
7 committee conference committee report. I don't know the
8 exact language, but it was part of the bill that was before
9 both the Houses when the bill failed last year.

10 Senator Muskie. May I ask a question of staff?

11 With this language and committee report, if labor wished
12 to participate and carry the burden, can't they do it under
13 the language here in the contracts management?

14 Senator Domenici. Your question is whether they could,
15 Mr. Chairman?

16 Senator Muskie. Yes.

17 Mr. Cummings. You mean can they contract away --

18 Senator Muskie. Yes.

19 Mr. Cummings. Under the legislative language, I
20 don't believe they could do so.

21 Senator Hart. I think we should have a roll call
22 vote as a matter of disposing of the issue.

23 Senator Wallace. COULD I ask another question, please?

24 Supposing a plant has been operating at slightly more
25 than capacity and involved in overtime payments and people

1 and become used to that; what happens then? Is that overtime
2 included in that kind of pay provision if they have been
3 having over(150)?

4 It seems it is an awfully broad statement to cast out
5 on the line and let the world take care of. Is there an
6 answer to that?

7 Senator Hart. I think we should put language in to say
8 we are talking about the normal rate of compensation.

9 Senator Wallace. I think we should at least do that.

10 Senator Randolph. That would certainly be helpful,
11 regardless of how members think at this point on the
12 amendment.

13 Senator Hart. That can be made part of the report
14 language.

15 Senator Randolph. Call the roll, please, if agreeable.

16 Mr. Yago. Senator Anderson?

17 Senator Anderson. Yes.

18 Mr. Yago. Senator Baker?

19 (No response.)

20 Mr. Yago. Senator Baetsen?

21 (No response.)

22 Mr. Yago. Senator Baulick?

23 (No response.)

24 Mr. Yago. Senator Baizer?

25 Senator Baizer. Yes.

Mr. Yago: Senator Culver?

Senator Culver: Yes, by proxy.

Mr. Yago: Senator Domenici?

Senator Domenici: Yes.

Mr. Yago: Senator Gravel?

Senator Gravel: Yes.

Mr. Yago: Senator Batt?

Senator Batt: Yes.

Mr. Yago: Senator Hollars?

(No response.)

Mr. Yago: Senator Meynzen?

(No response.)

Mr. Yago: Senator Muskie?

Senator Muskie: Yes.

Mr. Yago: Senator Stafford?

(No response.)

Mr. Yago: Senator Wallop?

Senator Wallop: No.

Mr. Yago: Senator Randolph?

Senator Randolph: Yes.

Mr. Yago: The motion carries by a vote of eight to one.

Senator Domenici: Senator Stafford yes, by proxy,

please.

Mr. Yago: Nine to one.

Senator Randolph: And with the understanding we commit

1 other members to be recorded if they so desire, it
2 would not be changed by their vote.

3 Move to the next matter, please.

4 Senator Hart. Last year I offered an amendment including
5 national monuments and recreation areas above certain acreages,
6 10,000 acres above the Class I category. I am sorry, just
7 national monuments.

8 Mr. Billings. Last year was both.

9 Senator Hart. But this proposal would include only
10 national monuments. There are a couple of doses, I think,
11 affected. We will pass that list down.

12 Senator Randolph. This was a matter of considerable
13 discussion the last time around.

14 Senator Hart. That is right. And I think we can
15 summarize the arguments in about two sentences. Namely,
16 many of the national monuments are as important as wilderness
17 areas and national parks for recreation purposes and should
18 not suffer the effects of deterioration of air quality
19 because of the use that are put to for recreational purposes.

20 There was something on the part of some members that
21 the size limitation be lifted by a substantial amount, and
22 we might want to hear discussion on that before the matter
23 is put to a vote.

24 Senator Randolph. Have we had contact with Senators
25 not on the matter in the areas in which these monuments

1 are located? Have we had any input from members other than
2 the members of this committee?

3 Mr. Cummings. I don't believe Senators have been
4 contacted who did not also have colleagues on this committee.

5 Senator Bart. On the question of reallocation,
6 the staff might want to talk about arrangements in the last
7 mark-up session on what would be the effects of reallocation
8 or downgrading.

9 Mr. Billings. Under the bill as approved, the committee
10 bill as approved thus far, the only way an area -- areas
11 not designated by statute could only become Class 1 on
12 unilateral action by States, according to Senator Gravel's
13 amendment. To include any or all of these areas are included
14 as Class 1 areas by the statute, they are solely reliant
15 on State action.

16 Senator Bart. Under the arrangement we had worked
17 out, if this amendment is adopted, can they be reduced
18 to Class 2? And if so, how?

19 Senator Murkie. Where is the language of this amendment?
20 I have nothing here that gives me that, the language of the
21 previous amendment.

22 Mr. Cummings. I don't believe it was distributed.
23 Sir.

24 Senator Murkie. We acted on Senator Gravel's amendment
25 last time, didn't we?

1 Mr. Cummings. Yes.

2 Mr. Gravelly. Under the General Amendment they were
3 adopted --

4 Senator Muskie. What is the net result as of this
5 point? I don't carry this around in my head for weeks at
6 a time. I would like to know where we stand.

7 Mr. Cummings. At this point, Senator, by the Senate,
8 all the national parks and each national wilderness area
9 and national memorial park that exceeds 5,000 acres in size,
10 and each national park that exceeds 6,000 acres in size,
11 those are Class 1 permanently by statute.

12 Senator Muskie. Is that the same as last year's bill?

13 Mr. Cummings. Yes, sir. All the other Federal lands
14 are Class 1, capable of being designated Class 1 by the
15 States.

16 Senator Muskie. Under last year's bill we had to have
17 concurrence of Land Management?

18 Mr. Cummings. That is right.

19 Senator Muskie. You are going to change that so a
20 State on its own can make an area a Class 1 area? In what
21 other way was last year's bill changed as of now?

22 Mr. Cummings. With respect to new parks and wilderness
23 areas, Senator Gravelly offered an amendment deleting the
24 Stevens Amendment so that new parks and wilderness areas
25 are treated like any other Federal land.

1 Senator Mackie. That is subject to classification of
2 Class 1 by the States?

3 Mr. Connors. By the State. Of course, it is possible
4 for that to be done in the authorizing legislation, but
5 without any change, it would be done by the States.

6 Senator Hart. Can you move to the areas which are
7 designated as Class 1?

8 Mr. Billings. Last year the monuments were provided
9 discretionary Class 1 with the opportunity to move into
10 Class 2.

11 Senator Hart. What is what we are proposing this time
12 as well?

13 Mr. Billings. These monuments would be Class 1, and
14 with the agreement of Federal Land Management and the State,
15 that could be redesignated as Class 2 areas.

16 Senator Hart. Certainly.

17 I am ready for a vote.

18 Senator Domenici. Mr. Chairman, may I ask something?

19 Senator Randolph. Yes, Senator Domenici.

20 Senator Domenici. I understand and gratefully respect
21 Senator Hart's continuing interest in this respect. I
22 would just recall the history, as the committee knows the
23 subject of national monuments as mandated, Class 1 was the
24 subject of numerous deliberations in this committee last
25 year, so some effort, if not the subject matter of a full

1 Floor debate to include some or all of the national monuments,
2 proposed by Senator Hart and sponsored by Senator Hatfield
3 from Oregon, as I recall. In the floor it was defeated.

4 The theory that this Committee used last year, it seems
5 to me, is even more fortified by the amendment that we have put
6 in now. The whole notion was to go in with a minimum of
7 Class I's, but those we could know the nature of, knew they
8 were rather homogeneous and let the States develop an overall
9 plan in their States for no significant deterioration. That
10 was our proposition. We fortified that by the Gravel
11 amendment.

12 The governors had time to take an overall look at the
13 impact, and may include these kinds of Federal lands
14 and others in Class I. As the Chairman recalls, the success
15 of this bill last year, to a great extent, was predicated
16 upon that kind of rationale behind the no significant
17 deterioration.

18 I don't know if we will have the same kind of bipartisan
19 support, but it appears to me, if there is a genuine interest
20 in bipartisan support for the no significant deterioration
21 aspect of this bill, that this will foster it. And the
22 inclusion of national monuments, I think, has a serious
23 chance of capturing that.

24 I don't believe that I am suggesting that none of those
25 are going to end up Class I's in these United States,

1 because many of them will. On the other hand, without
2 knowing anything about them, just the name as you see them,
3 you can tell they are of such diverse kinds of use as
4 compared with our design concept Class 1's.

5 I will give my own New Mexico White Sands, and I would
6 suggest it is morally dissimilar from the mandatory Class 1's
7 in this bill. It is not a national park in the sense we
8 are protecting the national parks by mandate. This is a
9 broad piece of desert that has 145,000 acres, with a missile
10 range and an air base alongside, and has been there for
11 years, and natural gas fields 30 miles away. And it is an
12 open desert that is white in color rather than typical of
13 other parts of the desert.

14 To improve the State's mandatory designation of Class 1
15 for that kind of terrain without then looking at the overall
16 impact seems to me to be totally inconsistent with the
17 promise we took from the very legislation that brought such
18 great support for the no significant deterioration and the
19 mandated Class 1.

20 I don't support it. Senator Mark's staff seems indicated
21 that we might consider revising monuments in excess of
22 150,000. That is not the present amendment. That would
23 obviously include White Sands, but I don't think I can be
24 parochial on this issue if we were to exclude White Sands.

25 It just appears to be inconsistent with the rationale

1 that found much good support in the past by take this kind
2 of Federal public land with such diverse kinds of use and
3 or include then in a restricted one kind of denote the purposes
4 we originally had in mind. And I urge that we not put it
5 in the bill this year.

6 Senator Randolph. We will vote on the matter. Call
7 the roll.

8 Mr. Yago. Senator Anderson?

9 Senator Anderson. Aye.

10 Mr. Yago. Senator Baker?

11 Senator Dismick. Senator Baker, by proxy, no.

12 Mr. Yago. Senator Baughman?

13 (No response.)

14 Mr. Yago. Senator Burdick?

15 (No response.)

16 Mr. Yago. Senator Chafee?

17 Senator Chafee. No.

18 Mr. Yago. Senator Culver?

19 Senator Hart. No, by proxy.

20 Mr. Yago. Senator Dismick?

21 Senator Dismick. No.

22 Mr. Yago. Senator Gravel?

23 Senator Gravel. Aye.

24 Mr. Yago. Senator Hart?

25 Senator Hart. Aye.

1 Mr. Tamm. Senator McClellan?

2 (no response.)

3 Mr. Tamm. Senator McNamara?

4 (no response.)

5 Mr. Tamm. Senator Muskie?

6 Senator Muskie. I will pass.

7 Mr. Tamm. Senator Eastland?

8 Senator Eastland. No, by proxy.

9 Mr. Tamm. Senator Hallen?

10 Senator Hallen. No.

11 Mr. Tamm. Senator Randolph?

12 Senator Randolph. No.

13 Senator Muskie. I will vote, but let me indicate my
14 concerns. Last year in the committee I voted for this
15 kind —

16 Senator Chafee. Could you speak louder, Senator?

17 Senator Muskie. I don't often get charged with speaking
18 too softly.

19 (Laughter.)

20 Senator Muskie. Last year I voted for an amendment
21 similar to this, and on the floor I voted against it for
22 the reason we put together a bill that obviously had the
23 momentum to get Senate approval, and, hopefully, to get
24 congressional approval before we finished. And this was a
25 very important part of the compromise on the mortgage

1 bill that we were able to put together.

2 Ideologically I am for this kind of protection. But,
3 on the other hand, I think that these areas can be protected
4 under the bill without this amendment. And for the time
5 being, I am going to vote aye to indicate my desire to
6 protect these areas. I think I do know what difference the
7 vote makes.

8 Senator Randolph. Your vote aye, Senator Muskie?

9 Senator Muskie. I vote aye at this point, but may
10 well change my mind later in the interest of preserving
11 the kind of support for the bill. I would like to see the
12 bill again.

13 Senator Randolph. Before the announcement of the vote,
14 Senator Hart knows this was the position I took last year.

15 Senator Muskie. I took the same position.

16 Senator Randolph. I voted against the proposal and I
17 voted against it on the floor. In taking that position,
18 I gave much thought to it, studied it carefully. I understand
19 the differences of thinking and conscious within the
20 membership, always. It was my feeling that there was a
21 provision for protectiveness, that it was, in a sense, a
22 matter back at a level beyond the Federal determination.

23 And for that reason, I have, in a sense -- without
24 talking about it, because I discussed it much on the prior
25 occasion -- I have voted as I have. I can well understand

1 the concern Senator Hart has, and other members. From time
2 to time we make these determinations. And yet I think
3 the overriding purpose of the committee membership is to
4 do the job as best we can to protect the quality of life
5 and the environmental state which has been the hallmark
6 of this committee from year to year.

7 Senator Chafee. I could make a comment. I would
8 like to associate myself with your remarks. I tend socially
9 to favor Senator Hart's amendment, but it is something that
10 might be accomplished other ways. And I reserve my right
11 to change my vote on the floor on this.

12 Senator Randolph. Yes. And I have always stated and
13 restated, but it doesn't really need to be stated or
14 restated; there is no mandatory voting in the Senate itself
15 because of the votes cast in a committee. I mean, that
16 is another vote and another time. And who knows, something
17 may be said in the Senate and a determination which goes
18 beyond your earlier feeling as you voted in the committee.

19 I think there is a very close significance, not only
20 to vote, but even the philosophy of the subject matter.

21 Now, what is the vote?

22 Mr. Vago. The amendment fails by a vote of five to
23 six.

24 Senator Domenick. Reporter McClure sent down a note.
25 He votes no by proxy.

1 Mr. Rupp: Please be seated.

2 Senator Randolph: We would like to start, I think.

3 Mr. Williams: Mr. Chairman, we are going to take C
4 on the agenda. Item B will not be offered. Item C is a
5 proposal by the chairman, Senator Randolph.

6 Senator Randolph: Yes, I have an amendment that I
7 wish to have you consider, and it will be placed before
8 you. It is somewhat a modification of the memo itself.

9 The amendment goes to the matter of increments for
10 smaller, well-controlled sources. I want to document what
11 I am saying. And I do so by recalling that the aluminum
12 industry, through its presentation during our hearings,
13 made what I felt was a valid case, that with the best
14 available control technology installed, the new facilities
15 of that industry are relatively insignificant sources of
16 pollutants.

17 I have felt that it does not seem necessary to make
18 those operations go through what I call the elaborate
19 modeling process and bear the Class 2 increments of the
20 nonattainment provisions of the legislation.

21 Now, our proposed amendment provides for any source
22 whose total emissions after the use of the best available
23 control technology will be less than 50 tons per year.
24 Now, that is what I call a well-controlled source and it is
25 exempt from the Class 2 increment requirement.

1 The bill provides that any source which has the potential
2 to emit 100 tons per year of any one pollutant must: A,
3 undergo a permit review; B, use the best available control
4 technology; and, C, meet the Class 2 increment and the
5 secondary standard; and, D, if close to a Class 1 area,
6 protect the air quality related values of that area.

7 Under this amendment, sources whose actual -- and
8 underscore "actual" -- allowable emissions with control
9 technology do not exceed 50 tons per year of all the combined
10 pollutants are exempted from the Class 2 increment. They
11 must meet all other requirements including the secondary
12 standard.

13 Now, the 50-ton-per-year exemption is consistent, as
14 I see it and believe it, to EPA's requirement on sources
15 lesser than 50 tons of allowable emissions. Without the
16 amendment the potential emissions test of the bill would
17 subject, as I see it, many more smaller, well controlled
18 sources to the increment modeling requirement, which I
19 have earlier mentioned. And I think this is an unnecessary
20 procedure. I think it is an unnecessary expense.

21 I have been glad, of course, to have members, as always,
22 discuss the amendment. I feel that it is well reasoned,
23 at least from the standpoint of its introduction as I
24 presented it at this time.

25 Senator Hallop. Could I ask you, sir, if this takes

1 about best available control technology?

2 Senator Randolph. Yes.

3 Senator Waller. Do EPA rules take place after best
4 available control technology or before?

5 Mr. Billings. You mean the measure of change in air
6 quality?

7 Senator Waller. Yes.

8 Mr. Billings. The measure is after.

9 Mr. Cummings. It is a pre-construction review. The
10 question is what is required of the source. In either
11 case, with or without this amendment, a source would be
12 required to install the best available control technology
13 as this act defines it.

14 Senator Randolph. It doesn't affect that?

15 Mr. Cummings. No. What it does provide is where
16 that technology has been used, sources which will be quite
17 small, relatively, after that requirement whose allowable
18 emissions will be quite small, will be exempt from the
19 incremental modeling requirement and exempt from having to
20 demonstrate they will be able to meet the Class 2.

21 Senator Domenici. Mr. Chairman.

22 Senator Randolph. Yes, Senator Domenici?

23 Senator Domenici. I don't understand the situation, so
24 could I ask the staff a couple of questions?

25 Would you tell me again, last year we defined what

1 emissions and the -- we defined them specifically and
2 quantitatively, and the generic one was a hundred tons. Why
3 do we need an exemption if the end product is only 50?

4 Mr. Cummings. The major difference is potential
5 emissions. The definition of major facility in the bill
6 is on the basis of potential to emit and give pollutants
7 in excess of 100 tons a year. This 50 tons is in terms
8 of the actual allowable emissions with the control technology
9 expected to be installed.

10 If you are talking about a source which receives
11 relatively good control, the potential emissions may be
12 a multiple of 10 above that. But the question of impact
13 on air quality really relates to available emissions.

14 Senator Domenici. Why should such a source as you
15 just described, with EACT down to 50, why should they have
16 trouble --

17 Mr. Cummings. I think it would depend on the area.
18 I don't think they would technically have problems meeting
19 the increment. What they are being excused from is the
20 process of modeling and the necessity to demonstrate they
21 will in fact stay within that. It also serves as an incentive
22 to improve emission technology so as to get your aggregate
23 emissions below that 50-ton-a-year figure.

24 Senator Askin. You have a difference between 50 tons
25 and 100, but always allowable emissions?

1 Mr. Billings: Potentially.

2 Senator Muskie. I must say, I don't understand the
3 difference. Making it to 50 on its face seems to make it
4 more strict, but you are saying it makes it less strict.

5 Mr. Billings. Potential emissions are the potential
6 emissions from the source without control. Allowable emissions
7 are the emissions from the source after the application
8 of best available control technology.

9 Senator Muskie. If you were to have installation
10 that met the test of Senator Randolph's amendment, what
11 would be its size under the test in the present bill?

12 Mr. Billings. It could be five times larger.

13 Senator Muskie. Fifty times larger?

14 Mr. Billings. Or a hundred, depending on degree of
15 control.

16 Mr. Braithwaite. It depends on the question of control.
17 For instance, nitrogen oxide control is approximately 50
18 to 60 cleanup right now. But particulate control is 99
19 percent and better now. So for that factor, then the size
20 of the facility affected here would be a difference of a
21 factor of almost a hundred.

22 It depends on how tight the control is on that source
23 what the potential of the best available technology is.
24 For sources where control is not very well developed, then
25 this change doesn't have as big an impact as it does for

1 source which controls its very well. (Laughter).

2 Senator Muskie. The pending amendment's effect is to
3 increase the size of facilities assembly.

4 Mr. Cummings. From the increment requirement. They
5 would not be exempt from the new source review or from the
6 BART requirements.

7 Senator Randolph. So, as I understand it, as I have
8 studied it, it really is an incentive. I am not saying
9 that is the agreement of everyone, but I think that element
10 is certainly involved.

11 Senator Bart. What would be the size of the plants
12 affected in terms of megawatts, say way of determining
13 that?

14 Mr. Cummings. I am afraid I can't estimate that. We
15 developed this in consultation with the aluminum industry,
16 which has a slightly different set of concerns.

17 Senator Bart. I am asking would a power plant in Utah
18 be affected?

19 Mr. Cummings. This does not affect the Class 1 require-
20 ments. It does not affect the necessity to go through the
21 Class 1 procedure.

22 Senator Randolph. I so stated that.

23 Senator Muskie. What is the effect of that?

24 Mr. Cummings. It is only an exception from the Class
25 2 increments and still would have to be reviewed as six

quality regions of Class I areas, if located in the vicinity
of Class I areas.

Mr. Brayman. Could I ask a question for clarification?

Senator Randolph. Yes.

Mr. Brayman. Is it my understanding if you potentially
would affect a Class I area then you go through the Class I
modeling just as if this definition did not occur?

Mr. Cummings. Yes.

Mr. Brayman. And secondly, I believe you also said
50 tons of all pollutants accumulated. Does that mean if
you have 20 tons of sulphur oxide as 20 and 20, that that
would add to a total of 60 tons and, therefore, you would
not be included under this?

Mr. Yago. That is correct.

Mr. Billings. The source would still have to model
against secondary standards; still have to monitor against
secondary standards. So the effect of this provision,
and primarily I think, relates to exception of existing
facilities in clean-air areas. The nondegradation policy
as articulated would not apply to those sources. Secondary
standards would apply; Class I best available control
technology would apply.

But the difficulty, as I understand, is with respect
to the existing facilities in clean-air areas.

Senator Muskie. What was that? You sort of dropped

your voice on that.

Mr. Billings. The difficulty is they are confronted with expanding existing facilities in clean-air areas with the existence of the Class 2 increment. That is one of the major problems.

Senator Muskie. What it seems to do is extend later, not smaller. And the committee bill --

Mr. Cummings. That is the reason you need an exemption. Senator. Let me relate this to existing EPA policy.

Senator Muskie. Your findings are as clear as mud today.

(Laughter.)

Senator Randolph. Just a moment, we don't take the staff on task on certain amendments, but we do on other amendments. Let the staff discuss it, whether a little muddy or cloudy or whatever. Let's hear what they say.

Senator Muskie. All I can do, Mr. Chairman, is try to make it clear to show they are not clear. I would like to have this clear. I am going to vote no until I understand.

Senator Randolph. The chairman will vote yes, you see, and no problem on that.

Senator Muskie. I would like to vote on a clear understanding what it is.

Senator Randolph. There are many matters that I am not clear on when we vote here. I think that is something

that honest people from time to time.

Will you include it?

Mr. Cummings. I will try, sir. Maybe I can explain in relation to the existing policy of NSA. Under the declassification regulations published by NSA, they now review all sources over a hundred year allowable emissions. They are considering a change, or are likely to make a change to review of sources over 50 year allowable emissions.

The Senate Bill as introduced last time, and the bill before us, is more restrictive than that. By using the definition of potential emissions — and we know this last year — it was a committee decision to be more restrictive and review more sources of a hundred years potential emissions. Sources that are much smaller, it would be calculated on the basis of allowable after control emissions.

The purpose of this amendment is to provide a limited exception from the instrument policy for smaller sources, smaller well controlled sources. Total allowable emissions after control are less than 50 tons a year. It is more generous with respect to the instrument required than the committee bill.

and the whole purpose behind it is to make it easier for the smaller sources to locate in areas which are otherwise clean. They still would be required to install the best available technology control equipment.

1 be constrained by the secondary standards. But not have to
2 meet the increment.

3 Senator Gravel. The end result is they are not going
4 to pollute any more?

5 Mr. Cummings. There may also be location factors.
6 It may be easier for them to locate in one particular site
7 rather than the other. For example, since talking about
8 exceptions, it may be easier for them to expand in an existing
9 site.

10 Senator Randolph. Senator Hart.

11 Senator Hart. I offered an amendment last year which
12 would have permitted additional increments to be used by
13 smaller polluters and it was defeated. And I am asking
14 how is that different from this?

15 Mr. Cummings. This would not change the definition
16 of baseline or the equipment of sources. It does not change
17 that in any way.

18 They have only emission limitation related to the
19 level of control that they achieve. They do not have the
20 emission limitation implied by the increment, by the air
21 quality increment.

22 Senator Gravel. Suppose after EPA made an investigation
23 and wanted to spot check it, the proof is after the fact
24 rather than before the fact?

25 Mr. Cummings. No. They make a projection of the

1 emission level reductions based on the technology expected
2 to be used.

3 Senator Gravel. They don't have to do any modeling
4 and presently they would have to do modeling?

5 Mr. Cummings. That is right; only with respect to
6 the secondary standard.

7 Senator Randolph. Senator Gravel is correct.

8 Senator Hart.

9 Senator Hart. So that one of these sources would not
10 have to do the reconstruction modeling, but after it was
11 constructed it might use up the increment, but we would
12 only know it after it was constructed and in operation?

13 Mr. Cummings. That would be important with respect to
14 subsequent application in that area.

15 Senator Hart. So that one polluter or a few polluters
16 might come in, not model, build the plant, pollute, use
17 up the increment, and someone else would come in and you
18 would not know that until you were in operation and until
19 too late to shut them down.

20 Senator Gravel. They would need a permit to do this,
21 right? The governing body would make that judgment whether
22 the change would hypothetically be able to use up the
23 balance of the inventory?

24 Senator Hart. But they have no fear upon which --

25 Senator Gravel. But from our point of view, there

1 is no net increase in pollution level.

2 Senator Waddle. There is a large level of doubt.

3 Senator Gravel. If overpolluted, you can shut them
4 down.

5 Senator Hart. When does that happen? How many have
6 we shut down?

7 Senator Gravel. I hope if we have a law and somebody
8 goes ahead and builds under that law, and they overbuild,
9 that we would shut them down. I think it would be very much
10 in our rights to demand that.

11 Mr. Billings. It is only if they exceeded the secondary
12 standard, not if they exceeded the increment. The increment
13 is irrelevant to them. The increment is not binding on
14 them.

15 Senator Gravel. But it is binding on the area. Let's
16 understand it clearly. All I think we are giving up by this
17 amendment is the judgment made by the polluting agent whether
18 or not the existing plant can occupy the balance of the
19 inventory. What else are we giving up?

20 If they exceed that and EPA finds that out, they can
21 fine them or shut them down. And I would go for strong
22 language to shut them down or fine them.

23 Mr. Billings. Basically, the committee adopted last
24 year a uniform national standard for nondegradation in
25 clean air areas of so-called Class 2 waters. And it said

the combination of sources in any given area cannot exceed this increment. And this amendment would say that policy does not apply to those sources which have allowable emissions of 50 tons or less.

Mr. Connors. Which is essentially the same decision the committee made last year with sources of potential emissions that were 50 limited tons.

Senator Gravel. We are not permitting with this amendment any greater degradation with the environment than under existing situations. This amendment sets the floor or the ceiling as the secondary standard to the extent that air is cleaner than secondary standards, considerably cleaner than secondary standards, any facility larger than 50 tons can't exceed an increment, but smaller than 50 tons allowable can go to secondary standards, and this amendment fills that gap.

Suppose a factory came in under existing law and you granted a permit to occupy, don't you apply on constitutional grounds to get the same treatment as long as you are only coming up to that floor?

Mr. Billings. I am not sure I can answer your question.

Senator Gravel. That gap is only created if you lack industry and can't -- if industrial and can't come in to occupy up to the secondary standard, then you will grant it, would you not?

1 Mr. Billings. Not under the policy in the legislation
2 as reported and passed last year. Because where the air
3 is considerably cleaner than secondary standards, you can
4 only use up that measure of change called the Class 2
5 increments, and after you use that up, then the door is
6 closed and there are no more plants coming in even though
7 you have a difference in background air quality and secondary
8 standards.

9 This amendment is if so long as everybody that comes
10 in there is 50 tons allowable or less, they can go all the
11 way up to the secondary standard regardless of the background.

12 Mr. Cummings. Which is essentially the same policy
13 the bill follows after the Senate rejected Senator Hart's
14 amendment on the floor last summer.

15 Senator Muskie. Did EPA recommend this?

16 Mr. Cummings. I do not believe EPA has a position.
17 I think the question is EPA, under its own regulations
18 without further legislative change, under its own regulations
19 it is contemplating a change to 50 tons a year allowable
20 emissions.

21 Mr. Braithwaite. EPA's proposal has a significantly
22 different effect under their regulations because under the
23 EPA regulations all sources no matter how small count against
24 the increment. That is what Senator Hart's amendment on
25 the floor last year was designed to make this bill do.

1 So the change there is which kind of review the source has
2 to go through. But in any case, after EPA regulations,
3 after that review, all sources count against the increment

4 Mr. Cummings. The EPA regulations do not require such
5 stringent control technology as the Senate bill. The sources
6 which would be covered by Senator Randolph's amendment
7 would be required to meet best available control technology.

8 Senator Domenici. I perceive that Chairman Randolph
9 has some very limited scope intended for this amendment.

10 Senator Randolph. That is correct.

11 Senator Domenici. And my questions are not intended
12 to be against that. I don't know what it is yet.

13 What I am concerned about, you keep talking about
14 baseline information. I thought the Senate bill's approach
15 and the reason we used "potential" rather than "allowable"
16 was that the first one that came into a clean area would
17 be establishing the baseline; is that right?

18 Mr. Billings. That is right.

19 Mr. Cummings. The baseline would be established at
20 the time of the first application.

21 Senator Domenici. I don't know the effect, but it
22 appears to me we are not going to do that, are we, for this
23 kind?

24 Mr. Cummings. With this amendment, the only change
25 is in the increment requirement. The baseline would still

1 established at the time the application was filed and
2 such a source would have to have the permit from the State.

3 Senator Domenici. How do you establish that baseline
4 if you are not going to require the excepted group to model
5 at the inception?

6 Mr. Cummings. Baseline is the front end of modeling,
7 not the results. It is established by monitoring in the
8 area. Not necessarily the source, but can be by the source.

9 Senator Domenici. We are still going to do that?

10 Mr. Cummings. Yes, sir.

11 Senator Domenici. So the baseline for the area is going
12 to be established by modeling even under this more accelerated
13 approach?

14 Mr. Cummings. By monitoring.

15 Senator Domenici. But not by modeling for the specific
16 applicant?

17 Mr. Cummings. Right. The question really is whether
18 they have demonstrated their emissions added to the baseline
19 will not exceed the increment. They do not under this
20 amendment.

21 Senator Domenici. You mean they are precluded under
22 this amendment --

23 Mr. Billings. They don't have to.

24 Senator Domenici. The effect of the amendment is to
25 create a Class 3 region?

1 Mr. Callahan. Yes.

2 The measure. It provides the possibility of one
3 of the secondary standard in the piece of the increment
4 for small sources, for well-controlled sources. That is
5 the quantitative concept for the Class 3 region.

6 Senator Randolph. In offering the amendment, I have
7 no desire to -- I shall press for a vote on the amendment;
8 you understand that -- but if you wish it to be set aside,
9 we are going to come back to it. And the Senator, your
10 chairman, he does not get upset about your votes. I believe
11 strongly in the amendment I have offered.

12 I think, frankly, it is an incentive that does attempt
13 to have a tight control and does attempt to have the
14 technology. I think, if you want to call that a little
15 easing, well, call it that, but I am not certain that this
16 isn't a valuable approach at times. We do that, and yet
17 I am for the protection of the strongest amendment possible.
18 My record shows that in all of the votes that are cast
19 in this committee and in the Senate, with differing viewpoints
20 at times.

21 But I am glad to have members of the committee say,
22 Mr. Chairman, let this go over.

23 Senator Domenici. Mr. Chairman, before we do that --

24 Senator Randolph. Yes, indeed.

25 Senator Domenici. Is the concern principally over an

1 existing industry that would want to add on?

2 Senator Randolph. Yes. I indicated that in my --

3 Senator Domenici. In your statement.

4 Senator Randolph. Yes, I did, sir. I was very strong
5 to say, you know, I said that. I chaired the hearing on
6 that occasion when the spokesman for the aluminum industry
7 was testifying. I indicated that.

8 Senator Domenici. The reason I asked is because I
9 don't understand the exemption now to be limited to that
10 kind of a facility that is in addition to an existing one.

11 Senator Randolph. I am simply saying that agency made
12 this point, and I believe it to be a valid one.

13 Senator Domenici. Would the chairman consider modifying
14 the amendment to further limit the exception to addition
15 to existing industries?

16 Senator Muskie. Mr. Chairman.

17 Senator Randolph. Yes, Senator Muskie?

18 Senator Muskie. I gather that there are members who
19 are still struggling to understand the full impact of this
20 amendment. I certainly don't want to form a hasty judgment
21 on it. I would suggest perhaps it would be useful at this
22 point -- we have had considerable discussion -- to pass
23 over this one so that each of us might grapple with our
24 understanding and come back to it. I don't think anything
25 would be lost, and I think in all fairness to you and your

1 amendment this might be a useful thing to do at the moment.

2 Maybe other members understand it more clearly than I
3 do at this point. But I sense, from some of the questions
4 raised, some are still struggling to understand the full
5 implication.

6 Senator Randolph. We struggle with other amendments
7 offered here from time to time. I am delighted to do what
8 you have suggested.

9 Senator Domenici. Mr. Chairman, I think Senator Chafee
10 was going to make a similar request. He would like to have
11 a little additional time.

12 Senator Chafee. I have to go.

13 Senator Randolph. I make a joint request with Senator
14 Muskie and Senator Chafee.

15 Let me ask, how long do you wish to continue?

16 Senator Muskie. Oh, it's noon.

17 Senator Randolph. Yes, sir. I have some commitments,
18 but it is not necessary that I be here.

19 Mr. Billings. I think it is 12:30 to 2:00.

20 Senator Muskie. Apparently, I can continue until
21 12:30.

22 Senator Randolph. Ed, I will ask you or Gary to take
23 over the committee consideration. My commitments are of
24 such a nature that at 12:00 o'clock I must give attention
25 to them because the parties are leaving the city.

1 Senator Muskie or Senator Hart.

2 Senator Muskie. Yes, all right.

3 Senator Randolph. Thank you very much.

4 Senator Muskie. Have we finished with No. 2?

5 Senator Hart. I believe we have. We are passing
6 2(b) and 2(c). So No. 3 on the agenda; there is no amendment
7 offered here, I believe, and I would like the staff to tell
8 us what we are going to propose in report language to
9 clarify the problem of changing background against a local
10 area standard. This is particularly a troublesome issue in
11 areas where natural background dust is part of everyday
12 life. And we tried to work it out last time, and apparently
13 the report language was not strong enough and clear enough
14 to give the administrators a basis on which to work.

15 What we are proposing is language, and, Leon, will
16 you tell us what it is about?

17 Mr. Billings. Senator, the language is an expansion
18 of the existing report language with respect to background
19 particulates. The essence of which is to enforce EPA's
20 current policy to recognize background particulates interfere
21 with the calculation of ambient air quality standards for
22 particulates. And the key phrases are in calculating
23 baseline levels for the purpose of nondeterioration require-
24 ments and making a determination of attainment of ambient
25 standards.

1 The committee would expect this policy to continue to
2 apply and suggest that the EPA hold hearings for establishing
3 more precise methods of adjusting particulate standards to
4 take into account background of particulates.

5 Senator Hart. The questionable words, as I take it,
6 are "expedite" and "more precise," since we had all sorts
7 of language last year and apparently the good-sense language
8 wasn't sufficient. So it is a spur to the agency to -- or
9 to the Administration to speed up and clarify the standards;
10 is that correct?

11 Mr. Billings. That is correct.

12 Senator Hart. Are there any questions?

13 Senator Domenici. Mr. Chairman, I commend Senator
14 Hart for taking this issue on. As the chairman remembers,
15 this issue was raised on the floor by me because of the
16 problem of whether or not we take these natural-forming
17 substances into account or not. And in the meantime,
18 additional information has been determined from States such
19 as mine and Colorado. And I think that clarifies and gives
20 them a little bit more to work on in addition to the words
21 "common sense." I think we have told them a little bit
22 about what we think common sense is, and I think it will
23 begin to solve this difficult problem, and I support it.

24 The other thing is we are beginning to use the word
25 "caveat" nicely.

1 Senator Burdick. You are saying we are going to use
2 common sense by dusting the air?

3 Senator Hart. That is correct

4 Mr. Billings. That is the bottom line.

5 Senator Domenici. Regardless how dusty it is?

6 Senator Hart. That is right. Since there is an
7 abundance of common sense on Capitol Hill, we can dispense
8 it all over the place.

9 (Laughter.)

10 Senator Hart. Item 4.

11 Mr. Billings. We have the problem of the absence
12 of a quorum. May the staff suggest we skip to Item 8,
13 which is Senator Domenici's amendment?

14 Senator Hart. Is there anything between 4 and 8 we
15 can take up?

16 Mr. Billings. You can take up 7.

17 All right, No. 8; No. 4 is Senator Gravel. No. 5
18 is still in the works. No. 6 is Senator Randolph's; No. 7
19 is Senator Stafford's; No. 8 is Senator Domenici's.

20 Senator Hart. No. 8 for Senator Domenici.

21 Senator Domenici. Can we go to 9?

22 (Laughter.)

23 Senator Domenici. Let me look at mine for a moment.

24 Mr. Billings. Senator, if you want to pass that for
25 a minute, I could dispose of on-scene and the staff can

1 what the outcome of that on-scene issue is.

2 Senator Hart. Let's do that, so long as members don't
3 get confused where we are.

4 Mr. Billings. That is Item 17, and it is discussed
5 in the summary memorandum before you. The committee discussed
6 the on-scene question and tentatively agreed to eliminate
7 the regulatory provisions of the committee on the assumption
8 there was adequate regulatory thought in existing law. It
9 is in the Food and Drug Administration, the Consumer Products
10 Safety Administration or the Toxic Substances Program to
11 regulate carbons and other propellents from pressurized
12 containers.

13 The staff has had extensive discussions, including
14 discussions, I believe, with Senator Bunkers' staff and
15 others, and has a recommendation that would do three things:

16 One, it would include the appropriate study provisions
17 of the committee bill in the conference report.

18 Two, it would provide for a report to Congress on
19 October 1, 1977, and ultimately on the progress of regulations
20 under various Federal statutes to which I referred.

21 And, three, it could include as a separate title of
22 this legislation a brief amendment on the Toxic Substances
23 Control Act, which would provide, to the extent that these
24 substances were not subject to regulations, were not regulated
25 by the Food and Drug and Cosmetics Act, and Consumer Products

1 Safety Act, they could be regulated under the Toxic
2 Substances Control Act. And the staff checked with the
3 parliamentarian, and that amendment is within the jurisdiction
4 of this committee and within the jurisdiction of the House
5 committee. So there should be no difficulty in taking
6 it through the Senate as an additional title in this bill and
7 eliminate a new major regulatory practice in the EPA, as
8 provided in last year's bill.

9 Senator Hart. What pressure is on those agencies,
10 absent last year's bill, to do this job?

11 Mr. Billings. There is an ongoing regulatory process.
12 There is regulatory effort in process. And one of the
13 reasons for removing the regulatory provisions from this
14 bill is not to interfere with that process and slow it down
15 by imposing yet another regulatory process and statement,
16 making sure we don't leave any holes.

17 Senator Hart. Senator Burdick.

18 Senator Burdick. Well, the bill we passed last year,
19 this work was all done by EPA, and now it is to be placed
20 in several agencies?

21 Mr. Billings. In the absence of legislation last
22 year, Senator Burdick, the two other agencies began the
23 process of regulating these terms. So we are trying not
24 to create an additional level or duplicate level.

25 Senator Burdick. Do we put EPA in control?

1 Mr. Cummings. No, sir. Last year's bill specifically
2 reserved the authority of FDA to regulate food and cosmetic
3 products.

4 Senator Burdick. How does this differ?

5 Mr. Cummings. This does not differ. It differs by
6 taking out of the overlay of EPA.

7 Senator Hart. Are we convinced that the regulation is
8 going forward?

9 Mr. Cummings. Yes, sir, in another provision that
10 will be recommended. This is a report by October 1st of
11 this year on the status of the regulation and the need for
12 any additional regulatory authority.

13 Mr. Billings. And if not going forward, the toxic
14 substances, the amendment giving EPA the authority to move
15 forward with it.

16 Senator Hart. Who prepares the report?

17 Mr. Cummings. EPA.

18 Senator Hart. On the progress of the regulation?

19 Mr. Billings. Yes.

20 Senator Hart. The question was raised before, has
21 there been any additional scientific data since our
22 consideration last year on the dangers of ozone deterioration,
23 Haven?

24 Mr. Whiteside. Yes. The National Academy of Sciences
25 produced their second report on the subject that came out,

1 I believe, in September or so. In fact, it was that report
2 that triggered the hand of the FDA to start a regulatory
3 process. It was also that that triggered EPA to start a
4 regulatory process on those things under FIPRA, under their
5 jurisdiction.

6 And so that is a change from the situation we had a
7 year ago. And there was nothing going on on the regulatory
8 front, apparently, because the scientific data was still
9 perceived as inadequate.

10 Senator Hart. I move the adoption of this language.

11 Senator Burdick. Just a minute. I have more questions.

12 In your explanation, it drops the regulatory section
13 of the bill by including the requirement the EPA report
14 on October 1, '77?

15 Mr. Billings. The regulatory section is dropped.

16 Senator Burdick. Who is doing that work, then?

17 Mr. Cummings. EPA. EPA is also required to provide
18 reports on research.

19 Senator Muskie. The structure of last year's bill was to
20 begin an evolutionary process regulation by EPA. But since
21 the other agencies have moved in, it seems to me to make
22 sense not to overcomplicate the regulatory authority, but
23 rather to build on the authority that exists. With the
24 committee amendment, that would strengthen it somewhat,
25 and as we would have in last year's bill, follow it through

1 regular reports.

2 So I think that ~~really~~ does what last year's bill did,
3 but simply avoids the fragmentation of authority by giving
4 EPA more of a regulatory thing. Is that accurate?

5 Mr. Billings. That is right.

6 Senator Burdick. Does EPA have more or less?

7 Senator Muskie. Less.

8 Mr. Cummings. EPA would have less responsibility. Its
9 authority under the Toxic Substances Act would be clarified.

10 Senator Domenici? Whose authority?

11 Mr. Cummings. EPA's.

12 Senator Burdick. Would have less under this amendment?

13 Mr. Billings. Less than under the bill last year.

14 Senator Muskie. Sufficient authority exists in other
15 agencies; is that correct?

16 Mr. Cummings. Yes, sir.

17 Senator Muskie. With EPA having this sort of oversight
18 role through the annual report puts EPA in the position
19 to move for additional legislation or keep the heat on the
20 other agencies to move.

21 Mr. Billings. And clarify authority under the Toxic
22 Substances Control Act. So EPA has regulatory authority if
23 other agencies fail to act.

24 Senator Domenici. You are not suggestion that EPA
25 had all the regulatory jurisdiction under the Toxic Substances

1 Act that we proposed to give them last year under the ozone
2 amendment, are you?

3 Mr. Cummings. No, sir. It is expected that the
4 principal regulations of polycarbons, particularly in
5 aerosol applications, will be done by FDA.

6 Senator Domenici. By whom?

7 Mr. Cummings. FDA.

8 Senator Domenici. Do we have any concern as to whether
9 or not they have such jurisdiction?

10 Mr. Cummings. I believe, on information from the
11 Department of Justice, that they do.

12 Senator Domenici. Mr. Chairman, I am going to support
13 the approach recommended by the staff, the one that the
14 regulatory jurisdiction heretofore claimed, to wit, FDA,
15 have not acted in beginning a regulatory scheme. But I
16 think we ought to know in a legal way our previous statute
17 was assuming a much broader position. It was that the ozone
18 or upper atmosphere should more properly be within the
19 jurisdiction of EPA rather than FDA regardless of the substance
20 that was contributing to the harm to the ozone.

21 We are not eliminating that position and saying under
22 some other thrust FDA is apparently assuming jurisdiction.
23 We may still have this point someday who should have the
24 broad jurisdiction over the upper atmosphere in terms of
25 human pollutants.

1 I assume the annual report would continue to advise
2 us as to the status of that exercise?

3 Senator Hart. That is correct.

4 Senator Domenici. And we still mandate the R&D efforts
5 be coordinated by EPA?

6 Mr. Cummings. Yes.

7 Senator Domenici. With reference to EPA's efforts
8 last year, was there not an international conference that
9 EPA called together for contributors to the ozone depletion?

10 Mr. Greer. That is the international conference
11 scheduled for April this year. And my understanding is the
12 regulatory authorities hope to have promulgated regulations
13 and propose the aerosol regulations to the extent necessary
14 by that time.

15 Senator Domenici. The reason I raised the question,
16 although we are a contributor, there is an international
17 problem and not merely ours.

18 I wonder if there is anything we should do in this
19 statute to further the international aspect of America's
20 role?

21 Mr. Greer. In the Senate bill last year we had a
22 section on international cooperation and we will preserve
23 it in this bill.

24 Senator Hart. Can we voice vote this?

25 Senator Domenici. Sure; yes.

1 Senator Hart. I have moved it.

2 Senator Domenici. Second.

3 Senator Hart. All in favor; all opposed.

4 The ayes have it.

5 Senator Burdick. Is there a quorum?

6 Senator Hart. We voted all the proxies on that.

7 (Laughter.)

8 Senator Hart. What is the staff's judgment on reconvening
9 Leon?

10 Mr. Billings. The staff recommends that the committee
11 reconvene at 2:00 o'clock.

12 Senator Hart. What does the tally say on who can be
13 present?

14 Mr. Billings. We have to check that out in the interim,
15 and if not a sufficient number for discussion, we would
16 cancel.

17 Senator Muskie. I move that we recess until 2:00
18 o'clock.

19 Senator Domenici. Can we take up the ones we passed
20 over?

21 Senator Hart. We suggest the absence of a quorum.

22 Senator Domenici. Fine.

23 (Whereupon, at 12:17 p.m., the committee recessed,
24 to reconvene at 2:00 p.m., the same day.)

25 (The Hearing in above entitled matter was subsequently postponed
to reconvene at 9:30 a.m. Wednesday, March 16, 1977.)

